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Constitutional  
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ILLINOIS STATE CONSTITUTIONAL CONVENTION OF 1862

BY

OLIVER MORTON DICKERSON

THESIS FOR THE DEGREE OF BACHELOR OF ARTS IN HISTORY

IN THE

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THIS IS TO CERTIFY THAT THE THESIS PREPARED UNDER MY SUPERVISION BY

*Oliver Morton Dickerson*

ENTITLED

*Illinois State Constitutional Convention  
of 1862.*

IS APPROVED BY ME AS FULFILLING THIS PART OF THE REQUIREMENTS FOR THE DEGREE

OF

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*Evans B. Greene*

HEAD OF DEPARTMENT OF

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1890

Received of the Treasurer of the University of Illinois  
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and for the year 1891  
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## CHAPTER I.

### THE CALLING OF THE CONVENTION.

The Constitution of 1848 was defective in many particulars, but the worst defects in practice may be grouped under these heads:

1. It allowed private legislation.
2. It fixed the salaries of state officers at too low an amount.
3. The judicial system was inadequate.

Under the practical workings of the Constitution of 1848 private and special legislation had grown into a monstrous evil. Bills were passed by title only, and often they did not contain exactly what their titles indicated. The mass of these private bills was so great that it is hardly conceivable that members of the legislature really knew what laws they were enacting. Because of the demands upon the time of the legislature for the consideration of these bills, laws of a public nature were delayed in their consideration or never passed.

Salaries of state officers were fixed so low that they were not at all adequate to meet the expenses of a man residing in a city during the comparatively high prices existing <sup>in the</sup> fifties. These salaries were:— Governor \$1500, Secretary of State \$800, Treasurer \$800, Auditor \$1000. These sums appear almost ridiculously small when we take into consideration the work to be done, the talent demanded, and the cost of conducting a campaign.

The decade from 1850 to 1860 was one of unexampled development in the state. Population increased at a very rapid rate. The framers of the old constitution had formulated a judicial system to meet the conditions of industry and population as they existed in 1850. With the new growth in both industry and population these judicial regulations became inadequate and a new constitutional provision





became a necessity. Mr Antony <sup>h</sup> <sup>3</sup> sums up the situation as follows:  
"As a matter of fact, the state increased in population so fast, and the development of the various complicated interests was so rapid, and there were so many things that came to pass that nobody anticipated or thought of, that the Constitution became almost obsolete. The people had outgrown it, and it was so defective in so many particulars that a new constitutional convention became imperative!"<sup>1</sup>

The demand for a revision of the Constitution became general and on February 3, 1859 the legislature provided by joint resolution that the voters at the regular election in 1860 should vote for or against calling a constitutional convention.<sup>2</sup> The result of the popular vote was decidedly in favor of calling the convention. In accordance with this expression of opinion, bills were introduced in both houses of the legislature. In the House, a bill providing for a convention was introduced January 10, 1861.<sup>3</sup> After some discussion, this bill was referred to a committee on judiciary which on January 29 reported the bill back with the recommendation that it be not passed.<sup>4</sup> In the meantime the senate had passed a bill providing for a convention to "amend the Constitution". The House took up this senate bill and passed it on January 22 by a vote of seventy-one to zero.<sup>5</sup> The Senate killed a bill similar to the House bill, and on January 31, 1861 the final bill providing for a convention to "amend or revise the Constitution" was approved. This law provided that delegates should be elected in the fall of 1861

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1. Constitutional History of Illinois, p. 106.

2. Journal of House of Representatives 1859, p. 386.

3. Journal of House of Representatives 1861, p. 38.

4. Journal of House of Representatives 1861, P. 244.

5. Journal House of Representatives 1861, p. 187.



from the same districts and in the same manner as members of the lower house of the legislature. It also carried with it an appropriation to meet the necessary expenses of the convention, fixed the time and place of meeting, ~~and~~ the rate of pay for the delegates, and provided that the results of the labors of the convention should be submitted to the voters for their approval<sup>1</sup>.

Before the delegates could be elected, however, momentous things had happened. The storm of civil war burst upon the country and party issues were forgotten. The southern half of the state was overwhelmingly Democratic and at the same time intensely opposed to abolition. The position of the majority appears to have been that slavery was all right in the south, that the southern states had a perfect right to keep slaves, and that property rights in these slaves should be protected; but they were not willing that negroes should enter Illinois, and few probably favored any measure that would introduce slavery into any territory already free - unless the people of such section were in favor of its introduction. While they would not support any measure looking toward interference with slavery where it existed, and even looked with favor upon slavery as an institution, the great majority would not support the slavery men in their attempt to destroy the Union. They were, in 1861, in a humor heartily to support a war for the maintenance of the Union, but would not have supported such a war if they had seen that the logical and inevitable result would be the destruction of slavery. Because of their loyalty to the government, and because of the excitement following the fall of Ft. Sumter, party controversies were almost forgotten. There was but one party and that a Union one. As time went on, however, and the first outburst

1. Text of law in Pub. Laws passed by 22nd General Assembly, p. 84.







of patriotism spent itself, the people began to realize the seriousness of the struggle. Men who had been prominent in Democratic politics had to either join the Republican party, enter the army, keep their party organization alive by raising local and state issues, or leave politics. A loyal citizen could follow any one of these courses. Undoubtedly opposition to the war was developing during the latter part of 1861 and early part of 1862, yet there is very little, if any, evidence that such opposition found expression in the election in November 1861. There is some evidence, however, that some Democrats considered the convention a convenient means of reorganizing the party on state issues and so keeping it alive until the war was over. No doubt the sentiment expressed in an editorial on the "Constitutional Convention" of the Urbana Weekly Democrat, August 24, 1861, was that of many a Democratic journal and leader. It was as follows:-

" The Democrats of Champaign County should wake up to the importance of selecting delegates to the convention, and proclaim in tones that cannot be misunderstood that they are in earnest upon all matters absorbing state casualties at this particular time. We have a right to such vigor and prudence in the action of the convention as should characterize the Democracy as independent in the fall election. The whip and spur of extreme abolition sentiment and the efforts made to give the war a partisan character should teach us the experience (advantages) of sound legislation for the prosperity of Illinois. Unless we revive our party on issue as far as regards state and local elections and demand our rights in the state, it may be expected that we will have to witness in silence the overthrow \*\*\*\*\* of Democratic principles \*\*\*\*\*. This question is one of great magnitude, and the Democrats of the whole



state should not be caught napping \*\*\*\*\* for the issue is to them one of great <sup>local</sup> importance. Discuss them now in your towns and pre-sinets, that all may vote understandingly, and not be lead into pleasing eccentricities by the opposite party". On August 31, this same paper, in an editorial, speaks of needed amendments to the Constitution and appeals to the Democrats to maintain the party on local and state issues.

As to the general interest taken in the election of delegates the Urbana Democrat of November 6, 1861 has the following to say:-

"The annual election came off on Tuesday last; after years of most intense political excitement, it seems strange to see old party lines blotted out and the people casting about, making choice of the best and most deserving without any respect to former political organization. This is as it should be and any person attempting to foster and keep alive old party feuds, is doing more for the rebel influence than he is for this government under which he lives".

From this statement it would seem clear that there was some little attempt by Democrats to revive their party by controlling the Convention, yet there was little interest taken in the election. The local Republican paper scarcely mentioned the election at all, and while Champaign County was Republican - Webber, the Democratic candidate, carried the county by a majority of 364. The total vote was about one half of that of 1860. In some Democratic districts - as at Springfield - the party made a party fight and elected its candidates. In other districts "Uncin" candidates were put up. These turned out later to be mainly Democrats. In still other districts Republicans were elected as such. The Republican press, as appears from an examination of the papers





of Springfield, Bloomington and Champaign, seemed to have allowed the election to pass practically unnoticed. Thus either through intrigue on the part of the Democrats, negligence on the part of Republicans, or because so many of the ablest lawyers were Democrats, the convention was composed of 45 Democrats, 21 Republicans, 7 fusionists, and 2 who were classed as doubtful<sup>1</sup>.

1. Moses, "Illinois Historical and Statistical" page 650.





## CHAPTER II.

## A SHORT ACCOUNT OF THE PROCEEDINGS OF THE CONVENTION.

The Convention met at Springfield on January 7, 1862. A permanent organization was effected by electing William A. Hacker of Union county as president, William M. Springer of Logan county as secretary, and John W. Merrit of Marion county as assistant secretary. One of the first questions that arose was the form of oath to be administered to the members. The (then existing) constitution provided that all officers occupying positions of trust or profit under the state government should take an oath to support the state constitution. Mr. Anthony was among the first to broach the subject. His position and that of the majority may be seen from the following extract from his speech during the debate on the question:- " The point that I insist on is that the convention itself should determine the form of oath. I agree with the gentlemen, that the oath prescribed is a very proper one: but it is proper for the Convention to determine the matter for itself  
 \*\*\*\*\* it was unanimously decided in the constitutional convention of Ohio when the subject was then broached, that there was a manifested inconsistency, that delegates elected to revise and amend the constitution should take an oath to support the very constitution they were called upon to take part in perhaps entirely revising and remodelling \*\*\*\*\* I merely throw out the suggestion for members of the Convention to determine the question"<sup>1</sup> The minority took the ground that there was no inconsistency in members swearing to support the constitution of the state as the Convention was acting under the provisions of that

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1. Debates in Constitutional Convention Jan. 7, State Reg. Jan. 8, '62.



constitution and would continue to do so, and especially should such oath be taken since it was prescribed by the instrument which would continue to be the law of the land until the new constitution should be ratified by the voters of the state.

The form of oath the majority finally decided should be administered was:- "You do swear to support the Constitution of the United States, and faithfully discharge the duties of your office as delegate to the Convention for the purpose of amending and revising the constitution of the state of Illinois".<sup>1</sup> The fact that the Convention refused to take an oath to support the state constitution was made the ground for ~~for~~ continual criticism by the Republican press, led by the State Journal and the Chicago Tribune. It was even insisted that the Convention was not legally organized because of the failure to take the prescribed oath.<sup>2</sup>

On the afternoon of the first day there was a resolution passed providing for the appointment of a committee to investigate "and report to the Convention as to the obligatory force of the law calling this Convention, and as to the power of the Convention to appoint a printer."<sup>3</sup> This resolution was introduced to allow, if possible, the appointment of a Democratic printer and also to determine the extent of the powers of the Convention. The Constitution of 1848 had provided that all public printing should be let by contract to the lowest responsible bidder. The legislature in

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1. Conventional Journal, page 3.

2. Editorial in the State Register, February 28 quoting from the Chicago Tribune, also numerous editorials in the State Journal.

3. Journal of Convention, page 8.







accordance with this act had passed a law providing the manner of letting the printing ordered by the General Assembly, and the law calling the Convention had provided that the Secretary of State should "cause such printing to be done as should be ordered by the Convention". Thus there was no necessity for any action by the Convention unless it wished to take the opportunity to test its powers. The committee, consisting of Anthony Thornton, Julius Manning, B.S. Edwards, William J. Allen, and Elliot Anthony reported on the following day. The majority report took the ground that the law calling the Convention was no longer binding, that the Convention was supreme touching all questions incident to the alteration and amendment of the constitution, and that the Convention had full power to contract for such printing as it might require. Mr. Anthony brought in a minority report opposed to the sweeping powers assumed, and claimed that the legislature was empowered to provide for the printing and in fact had already done so.<sup>1</sup> The majority report was adopted, however, by a vote of 49 to 21. This early assumption of far reaching powers on the part of the Convention at once aroused hostile criticism on the part of the administration papers. It was pointed out that if the Convention considered itself no longer bound by the law calling it, it might also refuse to observe that part of the law providing that its work should be submitted to a vote of the people. This criticism of the Convention, however, was in a measure silenced by the passage of a resolution late on the same day that all changes in the constitution should be submitted to a vote of the people.<sup>2</sup>

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1. Reports of proceedings in State Journal, January 10.

2. Constitutional Journal, page 28.



The work of the first three~~or~~ four weeks after the Convention was organized was done principally in committee meetings. During this time the general meetings were devoted to the consideration of resolutions covering a very wide range of subjects. Every state officer was called upon for extensive reports. Especially was there a marked tendency to investigate the executive department and the manner in which Governor Yates had conducted the organization and equipment of the volunteers and the expenditure of the war fund. He was called upon for an account of the indebtedness of the state, names of all contractors to be paid by the state, copies of contracts, and all the correspondence relating to the transfers of the state commissary department to the United States Quartermaster General.<sup>1</sup> He was also called upon for the various details of the organization and equipment of the volunteers of the state;<sup>2</sup> information as to military arrests<sup>3</sup>, and various other things. On February 1 a resolution was passed "instructing" the Governor and other state officers to suspend all further action upon the claims of the Illinois Central Railroad Company until the convention could investigate its claims.<sup>4</sup> To this the governor replied on February 13 that he denied any right of the Convention to instruct him in the performance of his duty and could only regard their resolution in the light of advice.<sup>5</sup> Connected with this extensive inquiry into the affairs of the executive department was the direction given to the committee on military to enquire into the way

1. Resolution of Wentworth, Convention Journal, Jan.13, p. 59.

2. Resolution of Brooks, Jan.20, Convention Journal, page 121.

3. Resolution of Omelveney, Feb. 11, Convention Journal, page 407!

4. Buckmaster's resolution Feb.1, Convention Journal, page 236.

5. Governor Yates' Communication, Feb. 13, Conv'n Journal, p.421.





the Illinois soldiers in the field had been supplied,<sup>1</sup> which committee after making many inquiries reported<sup>2</sup> toward the close of the Convention.

These measures taken together gave the impression to many people that there was a deliberate attack being made upon the Yates administration; in fact the attack was so open that no Democratic leader denies it.

In the heated condition of politics it was inevitable that questions of national politics should creep in; many of these intimately affected conditions within the state, and hence there was some excuse for dragging them into the discussions. The questions which received the widest discussion were, the direct tax, the negro problem, the United States Treasury notes, and the proposed amendment to the Federal Constitution. On all but one of these questions definite action was taken. The negro problem was a serious one in the estimation of the representatives from the southern part of the state, and they stood for severely repressive constitutional provisions. The delegates from several of the northern counties considered all provisions in regard to negroes as entirely unnecessary and only calculated to arouse party feeling. After much bitter discussion the question was settled by the insertion in the constitution of three separate propositions all of which were to be voted upon separately. The first was to prevent all negroes and mulattoes immigrating to and settling in the state, the second denied them the right of suffrage or the right to hold office, and the third gave the General Assembly power to pass all necessary laws to carry the other two propositions into

1. Resolution of Brooks, Jan. 18, Convention Journal, page 114.

2. Report of Committee on Military, Convention Journal, p. 323.





The question of ratifying the proposed thirteenth amendment to the Constitution, providing that congress should never be given power to abolish or interfere with slavery in any state, was disposed of in a way to arouse considerable criticism. In submitting the proposed amendment to the states Congress had provided that it should be ratified by the different state legislatures. In spite of this fact President Hacker, on February 8, brought in an ordinance ratifying the amendment.<sup>2</sup> This ordinance, in the face of strenuous opposition from the more conservative members who recognized the great impropriety of such action while the war was still in progress and insisted that the Convention was powerless to take any legal action in the matter, was finally passed without amendment by a vote of thirty-nine to twenty-three.<sup>3</sup> Ordinances were not popular at that time, but it was the method resorted to in dealing with the other two problems mentioned above. Mr. Singleton, on February 13, submitted an ordinance making it lawful for all collectors of revenue within the state to accept treasury notes in payment for all fines or assessments.<sup>4</sup> This ordinance was, however, rejected. The Convention tried to provide for the settlement of the direct tax levied upon the state by Congress, by authorizing the Governor through an ordinance to set off the direct tax against the amount due the state from the Federal Government on account of supplies furnished Illinois volunteers.<sup>5</sup>

1. Article XVIII, Negroes & Mulattoes- Convention Journal, p. 1098!

2. Convention Journal, page 358.

3. Convention Journal, page 452.

4. Convention Journal, page 444.

5. Convention Journal, page 940.



This ordinance was introduced by Mr. Edwards on March 19, and the Convention promptly passed it.<sup>1</sup>

It is worthy of note that only resolutions were passed during the first four weeks of the Convention while during the last six weeks of its existence the Convention sought to settle questions by means of ordinances, of which two more must be mentioned. After the news of the severe battle of Ft. Donelson had arrived people were vying with each other in providing some means of assisting in the relief of the wounded soldiers. On February 18, Mr. Manning brought in his famous ordinance appropriating \$500,000. in ten per cent bonds for the relief of the sick and wounded soldiers.<sup>2</sup> Of all the impractical things proposed and done by the Convention this was probably the worst. Relief for the soldiers was needed at once, if at all. It would take months to prepare bonds and place them upon the market. Then, too, the rate was absurd, being far above that at which the state could readily borrow. The great fact, however, that rendered the action of no great value was the extreme doubt as to the authority of the Convention to authorize the issue such bonds. All these objections and others were urged against the passage of the ordinance, but the majority would listen to neither reason nor delay and adopted the measure by a vote of fifty to sixteen.<sup>3</sup>

The last ordinance to occupy the attention of the Convention was that of Wentworth, introduced March 18 and passed three days later, providing that the city of Chicago should hold a special

1. Convention Journal, page 490.

2. Convention Journal, page 579.

3 Convention Journal, page 580.







election on the third Tuesday in April 1862, at which the people should vote for or against the city electing its own officers. The ordinance then went on to repeal three specific acts of the legislature.<sup>1</sup> This ordinance actually went onto effect , the proposed election was held , and the people voted in favor of electing their own officers. On the defeat of the constitution as a whole, however, the city government continued to exist as before, and the three legislative acts purported to be repealed, continued to be enforced.<sup>2</sup>

The other portions of the constitution that received most attention were:- the articles on banks and on judiciary, the bill of rights, the provision for suits against the state, and the subject of apportionment.

The article on banks and currency was important because its first and fifth sections were to go into immediate effect and remain in force unless the constitution should be rejected by the people.<sup>3</sup> The former provided that in future no ~~an~~ banking corporation nor association with powers of circulation should be created within the state, and the latter prohibited the auditor from receiving any bonds as security for notes to be issued thereon. The essential features of the fifth section had been embodied in a resolution passed February 7<sup>4</sup> and was supposed to have been in operation since that date.

There were two great objections to these two sections . In

1. Convention Journal, page 923.
2. J.A.Jameson, The Constitutional Convention, page 394.
3. Convention Journal , page 937.
4. Convention Journal,page 356.



the first place the fifth section amounted to a virtual abrogation of bank charters. Many members like Thornton<sup>1</sup> took the ground that the bank charters were contracts and that it was not within the powers of the Convention to abrogate them. On the other hand Fuller<sup>2</sup>, Edwards, and others gave exhaustive arguments to show that the measures were not attacks upon vested interests and that bank charters are really only forms of general legislation which may be changed by subsequent legislative acts. The other objection was that these sections should not go into immediate effect - that legally they could not do so until submitted to a vote of the people. Some members of the Convention, as for example Wentworth, while taking the general ground that the Convention had no power to put the clauses into immediate effect, and did not know how the auditor would look upon the "instructions" considered, the clauses harmless.<sup>3</sup> If they were effective so much the better; if they were not observed, no harm would be done.

The third and fourth sections of the same articles provided that "after the year 1866 no bank bill, check, draft, note, written or printed instrument of any kind, character or denomination whatever, (intended to circulate as money) shall be uttered or passed in this state",<sup>4</sup> and that the legislature should pass laws at its first session to enforce the above provisions.<sup>4</sup> The sixth clause provided that no corporation with either banking or deposit powers should ever be created in the state. The whole article was recognized by even the supporters of the majority as being so sweeping in its nature as to be impractical.

1. Debates of Constitutional Convention, Feb. 5, State Reg'r Feb. 7.
2. " " " " Feb. 5, in " " Feb. 8.
3. " " " " Feb. 7, in " " Feb. 13
4. Constitutional Journal page 1097.





Even some of the Democratic papers recognized this fact. The article would also have brought the state into direct conflict with the Federal Government on account of the new national banks which were being provided for by acts of Congress.

The question of the power of the Convention to reapportion the state for legislative purposes was not questioned, because a change in the number of representatives made a new apportionment necessary; but the specific apportionment adopted was seriously objected to on the ground that it was a practical Gerrymander. There is evidence that it was intended to be so, but that phase will be discussed later. The national reapportionment of congressmen had given Illinois one more congressman than there were congressional districts in the state. This was at once seized upon as an excuse for reapportioning the state. On January 21 a resolution was passed instructing the committee on judiciary to inquire into the power of the Convention to redistrict the state for members of Congress<sup>1</sup>. The majority of the committee reported favorably. on January 22nd. A majority holding that the Convention had no such power, made its report two days later.<sup>2</sup> The question was ably discussed in the Convention for some time. On March 5th, the committee on congressional apportionment was instructed by resolution to district the state at once for members of Congress.<sup>3</sup> Mr. Fuller presented a very able non-partisan argument showing the apparent necessity for and the power of the Convention to take such action.<sup>4</sup> The apportionment was bitterly opposed on the ground of lack of power on the part of the Convention, and on the ground that the apportion-

1. Convention Journal, page 131.

2. Convention Journal, page 179.

3. and 4. Convention Journal, pages 179 and 695 respectively.



met<sup>n</sup> adopted was manifestly partisan. The pressure was so great that the majority finally decided to submit this as a separate measure and so not endanger the whole constitution.

In the bill of rights, the principal things discussed were the abolition of indictment by grand-juries in criminal cases less than felony and several clauses stating the relations between the Federal Government and the state governments. The discussions went far afield and were the occasion for the introduction of much matter that was purely political in its nature and of no particular use in the formation of the constitution.

In the discussion of the article on judiciary, the principal points of difference were over the increase of authority given to the courts, the division of the state into districts for supreme court purposes, and the various places at which sessions of the supreme court should be held. The question of the increase of expense under the proposed judicial system was also discussed. Questions of a partisan nature did not materially affect the debates on this article. The provision of the constitution allowing suits against the state to be brought in the circuit courts was somewhat novel. The Daily Pantagraph of Bloomington asserted that this clause was introduced in the interest of the Mc.Allister Claims.<sup>1</sup> The wording was certainly adroit enough to admit that claim and very few others that were then pending, yet no such charges were brought during the discussions. At the same time it is not improbable that the parties interested in that claim helped engineer that clause through, since under the leadership of Singleton they made a determined effort to have the claim allowed by the next legislature.

1. Daily Pantagraph, June 6, 1862.







As as has been said, the most effective work of the Convention was done during the last few weeks of its existence. The criticism of its assumption of extreme powers, and of its scarcely veiled attacks upon the state administration became so severe that the members of the Convention became afraid that any constitution they might draw up would be rejected. The Republican press, together with some of the Democratic papers loyal to the war policy of the administration, began to array themselves definitely against the constitution. Several members withdrew from the Convention during its closing days. When the final vote was taken on the adoption of the constitution only forty-six were present, and of these, four voted against the adoption. Only fifty-six names were signed to the engrossed copy of the constitution, and of these, ten were signed through power of attorney.<sup>1</sup>

On March 21, Mr. Burr, acting for the committee, reported an address to the people.<sup>2</sup> This address stated the necessity for an increase in salaries and showed the advantage of allowing salaries of state officers to be fixed by the legislature. The address discussed in detail the more important features of the constitution. The requirement that bills should be read on three different days was presented as a cure for the evils of special legislation. The limitation on the debt making power of municipalities and the repeal of the two mill tax would protect the tax payer, ~~the~~ the giving of the soldiers in the field the right to vote would protect the interests of the volunteers, <sup>and the</sup> mechanic's lien would

1. Convention Journal, p. 1114 - Moses says 48 were present, 44 for and 4 against.

2. Convention Journal page 1115 - Moses says that 54 members signed the constitution.

3. Convention Journal, page 1038.



protect the laborer. The article on banks was held up as the only remedy for the evils of former banking laws. In closing, the address seeks to show how the ordinance in regard to the direct tax would render unnecessary an extra session of the legislature, defends the length of its own session, and appeals to the people to consider the constitution carefully before voting upon it. A hundred thousand copies of this address, together with the new constitution, were ordered printed in pamphlet form and distributed to the members of the Convention for the benefit of their constituents. Having completed its labors the Convention adjourned on the morning of March 24, having been in session seventy-five days.

Before leaving Springfield, an organization of the members opposed to the constitution was effected. The influence of the entire state administration as well as that of most of the members of Congress was thrown against the new constitution. The entire Republican press was organized to decry it and prevent its adoption. The principal lines of attack were: that it greatly increased the cost of the state government, carried with it objectionable negro clauses, the provision allowing the soldiers to vote did not amount to anything as the commission was to begin taking the vote before the constitution was printed, - the legislative and congressional apportionments were Gerrymanders of the worst type, and last of all the adoption of the constitution would be heralded as a great Democratic victory and would enable the Democrats to control the state government for years to come.<sup>1</sup> On the other hand, the Democratic journals vigorously defended the constitution because of the Illinois Central Railroad clause,<sup>and</sup> because it protected

1. From the daily Pantagraph during May and June, 1862.







labor interests. The measures they claimed would secure the latter result were:- the lien for mechanics, the provision for the establishment a board of agriculture, the establishment of a fixed day for the payment of taxes and assessments, and the exclusion of stumptail. They also claimed the new apportionment was in favor of the Republicans, and that the advantages arising from the limitation of the power of municipal corporations to tax and from the repeal of the two mill tax.<sup>1</sup>would be considerable. This is the same line of argument taken by Burr in his address to the people. The election was fiercely contested, each side resorting to every political device at its command. The first reports indicated that the constitution had been adopted and the Democratic papers rejoiced accordingly. The following extract from the Chicago Times on the day following the election, while probably a little overdrawn, gives a good idea of the bitterness of the contest.

"It was a political issue made so by the Republican leaders and by every Republican newspaper organ in the state. The Democracy accepted the issue, behold the result! It has been a fiercely fought contest by the Republican leaders and newspaper organs, and the contest was commenced at the assembling of the Constitutional Convention in January \*\*\*\*\*.

The majority of the Convention were denounced as a band of secession conspirators, and the constitution has never been alluded to by a Republican newspaper in any more gracious terms than a 'secession ordinance' an 'Egyptian swindle', an 'accursed thing' and no known supporter of it has escaped the epithet of 'secessionist' and 'traitor', and the result of the election, according to

1. Urbana Democrat, June 12.



these Republican newspapers, was to decide whether Illinois is a loyal or secession state. Other elements entered in. The Federal Government as far as congressmen could aid was thrown against the constitution, as well as banks, railroads, and express companies." The article went on to claim the election by 20,000.

These early reports, however, were too sanguine. According to the schedule, the voters were to vote on six different propositions, viz:- on the constitution as a whole, on the three negro propositions, on the article on bank currency, and on the congressional apportionment. Of these the constitution as a whole, the bank proposition, and the apportionment one were defeated. The negro propositions were carried. The totals are given below.<sup>1</sup>

For the new Constitution	- - - - -	125,052.
Against the new constitution	- - - - -	141,103.
For the bank proposition	- - - - -	126,538.
Against the bank proposition	- - - - -	130,339.
For negro and mulatto proposition No.1 <sup>2</sup>	- - - - -	171,896.
Against the same	- - - - -	71,306.
For negro and mulatto proposition No.2 <sup>3</sup>	- - - - -	211,920.
Against the same	- - - - -	35,649.
For negro and mulatto proposition No.3 <sup>4</sup>	- - - - -	198,938.
Against the same	- - - - -	44,414.

1. From official register of votes in Secretary of State's office.
2. Excluding negroes and mulattoes from the state.
3. Forbidding negroes and mulattoes the right of suffrage.
4. Giving the legislature power to enforce the other provisions.





For the Congressional apportionment	- - - - -	125,740.
Against the same	- - - - -	132,970.

The above are totals of the vote by counties. The geographical distribution of the votes may be seen from the accompanying maps. How nearly the vote was a party one may be seen by comparing the vote on the constitution as a whole with the map showing the vote in 1860, and with that showing the vote in 1862.





#### VOTE OF 1860 AND THE PROPOSED SENATORIAL APPORTIONMENT.

1. Shaded areas are the counties giving Republican majorities.
2. Unshaded areas are the counties giving Democratic majorities.
3. Red lines indicate senatorial district lines.
4. Figures show white population according to the census of 1860.
5. Outside of Cook county this would have made nineteen out of the thirty-three districts solidly Democratic. The legislative apportionment was just as bad.

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### VOTE ON THE CONSTITUTION AS A WHOLE.

1. Shaded areas are the counties giving majorities against the Constitution.
2. Unshaded areas are the counties giving majorities for the Constitution.





VOTE FOR STATE TREASURER IN 1862.

1. Shaded areas are the counties giving majorities for the Republican candidate, Mr. Butler.
2. Unshaded areas are the counties giving majorities for the Democratic candidate, Mr. Starne.







# PROPOSED CONGRESSIONAL APPORTIONMENT.

1. Red lines show district boundaries.
2. Figures show white population according to the census in 1860.
3. Outside of Cook county this would have made seven of the fourteen districts solidly Democratic.









1. Shaded areas are the counties giving majorities against the proposition.

2. Unshaded areas are the counties giving majorities for the proposition.





### NEGRO PROPOSITION NO. III.

1. Shaded areas are the counties giving majorities against the proposition.
2. Unshaded areas are the counties giving majorities for the proposition.





The vote of the soldiers is not recorded, apparently it was never taken <sup>in</sup> full; but the portion of it that is available indicates that their votes were almost solidly against the constitution. Below are the votes of two regiments as reported by soldier correspondents.

"Votes of the 13th Illinois Regiment" <sup>1</sup>

For the adoption of the constitution - - - - -	9.
Against adoption - - - - -	642.
For the bank proposition - - - - -	3.
Against the same - - - - -	648.
For the negro sections - - - - -	6.
Against the same - - - - -	650.
For the congressional apportionment - - - - -	6.
Against the same - - - - -	650."

"Votes of the Normal Regiment" <sup>2</sup>

The vote was taken by the officers of the regiment and not by the commissioners on May 21. Whole vote 593- only six for and these were from a single mess! Of course both of these regiments were really from the northern element of the state, the 13th being mustered at Dixon and the Normal Regiment from around Bloomington; yet they express a unanimity of opinion that is surprising. The vote of these regiments against the negro propositions is instructive, especially when one compares with it the great majority for these measures given by the state as a whole. Abolition

1. From the Missouri Democrat in Daily Pantagraph, Bloomington, Ill. June 11.

2. Daily Pantagraph, June 17.



sentiment seems to have grown much more rapidly in the army than among the voters in the north who had staid at home.





## CHAPTER III.

## THE CONSTITUTION AS ADOPTED BY THE CONVENTION

Mr. Anthony<sup>h</sup> in his constitutional History of Illinois says that the new constitution was a good one and would have been an improvement over that of 1848. As it never had a chance to be tested, it is impossible to say just how well it would have worked, but in the light of present experience it had some very serious defects. Among these was the article on banks and currency ~~and currency~~. This would have driven every banking institution in the state out of business, and in its operation would have conflicted with the National Banking Act. The experience of the few years preceeding the calling of the Convention had not been of such a nature as to arouse very much enthusiasm for banks of any kind. There had been so many failures, and abuses and wild-cat banking under the old laws had been so notorious, that some positive remedy was necessary; but the proper remedy did not lie in the direction of the measure adopted. Simply because banks had been badly managed was not sufficient excuse for abolishing them entirely. The measure reads today as though it might have been framed by the first Constitutional Assembly of the French Revolution, it appears so radical and impractical. When one considers the enormous expansion of the credit system under our present banking laws, he can not but be convinced that the extreme prohibitions of this part of the constitution would have seriously interfered with business.

The clause<sup>1</sup> in the article on the legislative department practically allowing the state to be sued in any circuit court of the state was of doubtful advisability. According to this section

1. Article IV, Section 32.



the legislature was compelled to appropriate money to pay the claims allowed by the courts. It is doubtful whether any state can consistently allow itself to be sued. Most of the states refuse to be made the defendant in a suit at law, and it was something of an innovation for the state of Illinois to take a different attitude. In order to prevent the encroachment of the judiciary upon the legislative department the courts of the state should not have the last word to say on claims against the state, but the legislative department should be free to determine such claims in its own way.

The provision that bills should be read at large on three different days, would have checked but would not have prevented private and special legislation. The provision that only general laws could be passed on certain subjects would have been adequate as far as it went. A far larger number of subjects were reserved for general laws than was the case in the constitution of 1848. The subject of private legislation had been one of the most crying evils under the old constitution. On this subject the new constitution stands about mid way between the lack of efficient regulation under the constitution of 1848 and the almost complete prohibitions of the present constitution.

The only essentially new provisions in the bill of rights were sections 11 and 31. The former provided for a summary trial in all criminal cases less than felony, and the latter stated the ideas of the Convention regarding the nature of the Union between the states. The term of the state officers was reduced from four to two years and the officers in charge were to be turned out of office in the middle of the term for which they had been elected. in this way a new election was ordered at an inopportune time. Aside from







the immediate partisan advantage of such a measure there seems no really good reason why the length of term should be reduced to two years. The fact that local officers were to hold office for four years made the change appear extremely partisan. The provision that salaries of state officers should be fixed by law was an excellent one, enabling the legislature to provide for changes in salaries to correspond with changes in the cost of living. The apportionments were arbitrary and partisan, but since they could be changed by subsequent legislation the constitution as a whole should not be condemned for this reason alone. However, it was by no means certain that the apportionments would not have enabled the minority to control the state government for some time to come.

There were a number of innovations in the article on judiciary, some of them good, others untried and doubtful. The provision for a prosecuting officer for each county, instead of one for each judicial circuit as formerly, we have found to work satisfactorily. The giving of the county courts extensive original jurisdiction in criminal cases, and the limiting of the necessity for an indictment by a grand jury to cases punishable by death or imprisonment in the penitentiary was one of the novel provisions. It might have worked well in practice, but it can not be said that the people were ready to abandon the indictment; for although the present constitution permits its abolishment, it is still retained as a part of our judicial machinery. On this question our present constitution stands about half way between the two extremes of the constitution of 1848 and of 1862. It is doubtful if the giving of the extensive judicial powers in criminal cases to the county court would have been as satisfactory as would



have been the retention of such jurisdiction in the hands of the circuit courts. At least, the constitutions of 1848 and of 1870 agree in giving county courts essentially probate business and entrusting criminal cases to circuit courts. The proposed tax upon civil cases is another novel feature of this section, and one that would not have rendered justice any easier for the litigant with but little money. The increase in the number of Supreme Court Districts was absolutely essential to meet the demands of the state.

There were some excellent provisions in regard to revenue. All taxes, both state and local, were to fall due at the same time, and were to be collected by the same person. This is the only sensible way in which taxes levied by different corporate bodies can be collected. It saves expense and relieves the tax payer of the annoyance of paying his tax in small sums, to various persons, and at inconvenient times. The limitation placed upon municipalities and local corporate bodies, forbidding them from lending their credit to any company or private corporation was a needed provision. It is far less detailed, however, than the provisions of our present constitution on the same subject.

The clauses in regard to negroes and mulattoes were sweeping in their nature: yet judging by the vote on these clauses they certainly seem to have been acceptable to a majority of the people. These provisions, however, no matter how ill advised they were, would have soon been rendered inoperative by the new amendment to the Federal Constitution.

The mechanic's lien and the clause regarding the Illinois Central Railroad Company and its obligations to the state were most excellent measures and have been retained in our present con-







stitution. The increase in the expenses of the state that would have resulted had the constitution been adopted would have been considerable, but on the whole, the increase was both necessary and desirable. In order that the relation between the constitutions of 1848 of 1862 and of 1870 may be seen, the essential provisions of the three are shown in parallel columns in the following table..

CONSTITUTION OF 1848.	CONSTITUTION OF 1862.	CONSTITUTION OF 1870.
Preamble - - - - -	Same - - - - -	Same - - - - -
<u>Legislature</u> - - - -	<u>Legislature</u> - - - -	<u>Legislature</u> - - - -
(a) <u>Size</u> - Senate 25, House 75.	(a) <u>Size</u> - Senate 33, House 102.	(a) <u>Size</u> - Senate 51, House 153.
(b) <u>Pay</u> -\$2. per day for 42 days - then \$1. per day,	(b) <u>Pay</u> - \$3. per day.	(b) <u>Pay</u> - \$3. per day and mileage of 10 cts. per mile.
(c) <u>Debt Limitation</u> \$50,000.	(c) <u>Practically the same</u>	(c) <u>Debt limitation</u> \$250,000.
(d) <u>Legislation</u> - not re- quired to be general, bills might be read by title only.	(d) <u>Legislation</u> - All bills to be read at large on three differ- ent days - General laws required in certain cases - divorces, roads, town plots, practice in courts of justice, chang- ing county seals.	(d) <u>Legislation</u> - all laws to be general.
(e) <u>Claims</u> - Must be proven before some tri- bunal and allowed by the legislature.	(e) <u>Claims</u> - <sup>State</sup> may be sued in the circuit courts.	(e) <u>Claims</u> - State never to be made <sup>a defendant</sup> independent in any suit at law.
(f) <u>Minority Representation</u> .		
<u>Executive</u> - - - - -	<u>Executive</u> - - - - -	<u>Executive</u> - - - - -
Governor- term 4 yrs. salary \$1500	Governor - term 2 yrs salary fixed by law.	Governor - term four years, salary to be fixed by law.
<u>Judicial</u>	<u>Judicial</u>	<u>Judicial</u>
(a) Supreme Court - -	(a) Supreme Court - -	(a) Supreme Court - -
1. Judges - three, term 9 years.	1. Judges - 3, term 9 years.	1. Judges - seven sal- ary \$4,000.
2. Divisions - three grand.	2. Divisions - three grand.	2. Divisions - three grand, seven election districts.
3. Judicial district nine.	3. Judicial districts sixteen.	



2. - - - - -

4. Places of meeting,  
Chicago, Ottawa, Peoria,  
Springfield. Mt. Vernon.

2. Congressional.

2. Essentially the same as that of 1847- except amendments to the same article could not be submitted oftener than once in four years.







Negroes & Mulattoes  
Prohibited from entering the state if free persons.

Revenue - - - - -  
1. Two mill tax.  
2. Poll tax allowed.  
3. - - - - -

Bill of Rights - - -

Education - - - - -  
1. No specific provisions.  
2. - - - - -  
3. - - - - -

Negroes & Mulattoes  
Prohibited from entering the state, denied the right of suffrage, legislature to enforce provisions.

Revenue - - - - -  
1. No two mill tax.  
2. Poll tax allowed.  
3. Illinois Central Railroad never to be freed from its obligations to the state.

Bill of Rights - - -

Education - - - - -  
1. General Assembly to provide an efficient system of free schools.  
2. State Superintendent.

Negroes and Mulattoes

Revenue - - - - -  
1. No two mill tax.  
2. No poll tax mentioned.  
3. Illinois Central Railroad never to be released.

Bill of Rights - -

Education - - - - -  
1. Same as in 1862.  
2. State and also county superintendents.  
3. No local appropriations for private or sectarian schools.



## CHAPTER IV.

## THE POWERS OF THE CONVENTION.

There were three leading instances in the proceedings of the convention where it passed upon its own powers. The first of these discussions was on its power to appoint a printer, the second upon the question of power to ratify the proposed amendment to the constitution, and the third was on the power to reapportion the state for members of Congress. The first great question was whether the Convention was bound by the constitution and the law calling the Convention. In discussing the resolution instructing the special committee to report on this matter and the power of the Convention to appoint a printer. Mr Fuller said: "As I understand the law, the the only object of the act is to provide a mode for ascertaining the will of the people with regard to the selection of delegates, and when they are once chosen, and the machinery of the constitutional Convention put in motion, it can not be hampered. Is it not controlled by the constitution? How is it possible it can be after the Convention has met"?<sup>1</sup> The committee consisting of Messrs Thornton, Manning, Edwards, W.J.Allen, and Anthony took the following position:- <sup>h</sup>Anthony, however, dissenting from the views of the majority. "It(the Convention) is a virtual assemblage of the people of the state, sovereign within its own boundries, as to all matters affecting the happiness,prosperity and freedom of the citizens, and supreme as to the exercise of all powers necessary to the establishment of free constitutional government, except as limited by the constitution of the United States \*\*\*\*\*". The following conclusions are arrived at: that after due organization of the Convention, the law calling it is no longer binding; and that the Conven-

1.Proceedings of Constitutional Conv'n, Jan 7, State Register Jan.8





tion has supreme power in regard to all matters incident to the alteration and amendment of the constitution; and it has full power to contract for such printing as it may require".<sup>1</sup> Mr. Anthony in discussing this report objected to the sweeping powers assumed and in the course of his remarks said; "I should like to ask some gentleman this question: Was the supreme power of this state passed out of the people to the delegates of the Convention? And if so, and they had the will to disorganize the present system of government now in existence, and discharge the officers of the state, have they the power?"<sup>2</sup> In reply to this Mr. Richmond said, "I can only answer for myself, that if the exigencies of the state required it, this Convention could proceed to appoint a governor just as they have in the state of Missouri,"<sup>3</sup> but he declared that all action should be submitted to the people. Other members speaking on the report took the ground that the Convention had wide plenary powers.<sup>4</sup> The majority of the members supported the majority report of the committee and so took the ground that the Convention was supreme in ~~its~~ powers but decided by a later resolution that its action should be submitted to the people. yet many members took the ground that the submission, while the proper thing, was not necessary. Even Mr. Thornton in discussing the bank proposition said: "The most liberal construction would impose no obligation upon the convention to submit its actions to the people".<sup>5</sup>

In the second great instance, the committee on judiciary on the question of the power of the Convention to redistrict the state

1. Report of the Special Committee, convention Journal p.19.

2, Proceedings of the Constitutional convention, on January 9, in State Register, January 15.

3 & 4 Same as note 2.

5, Debate in Convention, Feb. 3 - reported in State Register, Jan. 7.



for congressmen held that the Convention was a legislature and had general legislative powers. In part this report held: "A convention legally assembled for the purpose and with the power to frame the organic law of a state is a legislature, and not only so, but a legislature within the meaning of this particular provision, (that the state legislatures should determine the way members of Congress should be chosen ), of the Constitution of the United States. \*\*\*\*\* This Convention is a legislature authorized to create laws which may abolish other legislatures, and whose enactments when sanctioned by the people, will be the supreme law of the land. It has the power (whether it may be thought expedient to exercise it or not) to change, amend, annul, or establish the existing laws of the state; for instance in regard to practice and pleading, evidence, marriage and divorce, or in regard to any other kindred subject.\*\*\*\*\* This convention being a legislature \*\*\* and being superior in power in the act of making laws, to any ordinary legislature, may at least do in changing or abrogating the acts of a former General Assembly what a subsequent General Assembly might do".<sup>1</sup> Mr. Weighley, from the same committee, brought in a minority report in which he took a different view from the majority, in part as follows:- "This Convention is not called here to supersede the legislature, or to enact or revise laws for the government of the people; but to propose (not make) amendments to the organic law of the state \* \* \* \* \* , if this Convention is an embodiment of the people, and for that reason can perform all the functions of the legislature proper, by the same process of reasoning, it may perform the duties of the two other coordinate branches of the state government. It could depose the state governor and

1. Convention Journal, page 137.







~~and~~ proceed at once to exercise ~~at once~~ the prerogative of that state functionary. It could remove the judges of the Supreme Court now holding session in this capital and transfer the business to this floor, to be decided by vote of the convention".<sup>1</sup> His report goes on to argue that the limitation of the Constitution of the United States forbids an apportionment by a convention, because it had delegated that power to the state legislature and that even a favorable vote of the people of the state could not legalize the action. The Convention, however, adopted the view of the majority of the committee.

The question of whether the Convention possessed general legislative powers also arose in the discussion of the resolution putting certain sections of the article on banks into immediate operation. Terry, Underwood, and Stinson took advanced ground against the power of the Convention to declare an act in force at once. In reply Mr Burr said: "Does any gentleman in this hall say that this Convention is inferior to the legislature, or to the executive, or to the judicial departments of the state? Sir, we have the power to change all these organizations completely. The power of the Convention is three-fold. It is the epitome of all the powers existing in the state of Illinois." After interruption he continued: "I was going <sup>on</sup> to say that the Convention is an epitome of all the powers which exist in the state of Illinois. It is superior to the legislature and different from all the branches of the government in its sphere of action, and superior to everything \* \* \* \* \* limited only by the Constitution and laws of the United States."<sup>2</sup>

1. Convention Journal, page 177.

2. Debate in Constitutional Convention, February 1, in State Register, February 3,



Mr Omelveney discussing the same question said: " I believe the Convention has every judicial power, every legislative power, and every executive power that the people of the state possess. I believe furthermore - and I believe it ought to do it - that it has the power to suspend the law with respect to this army board and suspend their action at once".<sup>1</sup>

Singleton, in discussing the power of the Convention to ratify the thirteenth amendment to the Constitution of the United States, said:-"If this body is not a legislature then there never was a body convened in the state by that name known to the constitution and laws of Illinois. We have had General Assemblies with limited legislative powers \*\*\*\*\*".

Mr. President, this is the legislature. This body is what all the elementary writers on law denominate the supreme law making power of the state. \* \* \* \* \* I am surprised to hear a gentleman with the knowledge and experience of the gentleman from Cook (Anthony) express himself doubtfully as to the convention possessing legislative powers. What are we here for? What powers are we exercising? If we make laws, are we not a legislative body, and are not our laws binding and obligatory above other laws and other legislation of the law making power?"<sup>2</sup>

Congress had provided, when it submitted to the states the proposed thirteenth amendment to the Constitution which has already been mentioned, that it should be ratified by the legislatures of the various states. Before the Convention could ratify the amendment it was necessary that it should assume to be a legislature. This was a step that even some of the leading Democrats would not

1. Debates in Constitutional Conv'n, Feb. 1, in State Register, Feb. 3.

2. State Register, February 12.







take. Mr. Edwards spoke at length on the lack of power of the Convention to ratify the amendment.<sup>1</sup> Omelveney, however, took the same position as he did on the bank resolution, contending that the Convention was a legislature in the full meaning of that term as used by the Constitution of the United States and the bill passed by Congress. Later on he said: "We have no power to change the mode (of ratification) but I did say that either the one mode or the other was proposed, and that this body had the power if necessary - since it is both a convention and a legislature."<sup>2</sup> Mr. Underwood stated the position of those opposed to assumptions of the majority. He put forth his views in a very able argument in which he discussed two main propositions as follows: First, the Convention has not the power to ratify the amendment - because the Constitution gives Congress power to prescribe the method of ratification and Congress had prescribed the legislature as the proper body, because ~~the delegates were~~ not sent there for that purpose, and lastly because all of our acts should be submitted to the people before becoming binding. Second, if the Convention had the power it would be inexpedient to exercise it at this time - because, there is no real danger that slavery in the states will ever be interfered with by the general government, because, the passage of this ordinance would be calculated to induce the Abolitionists to again agitate for an amendment to prohibit slavery, and finally because it would be a degrading concession on the part of the government.<sup>3</sup>

The majority of the delegates supported, by their votes, the

1. Debates in Constitutional Convention, February 1, in State Register, February 3.
2. Debates in Constitutional Convention, February 12, in State Register, February 22.
3. Same as note 2 above.



view of the extreme powers of the Convention. Among the powers which the Convention actually attempted to exercise over and above the power to draft a constitution were: power to investigate the conduct of the different divisions of the executive department,-- especially as regards the military affairs, and it should be noted that the investigations carried on by the committee on military and the committee on finance were conducted as legislative investigations and not for the purpose of securing information necessary to the drafting of a constitution; power to instruct<sup>1</sup> state officers in the performance of their duties; power to repeal or suspend acts of the state legislature,--in the case of the bank resolution and especially in the case of Wentworth's ordinance to allow the people of the city of Chicago to assume control of their own city government; power to defy an act of the legislature - in the case of the law calling the Convention; power to reapportion the state for members of Congress; power to ratify a proposed amendment to the Constitution; power to provide for the payment of a direct tax<sup>2</sup> levied by the Congress of the United States; power to issue bonds;<sup>3</sup> power to declare acts in immediate force - the bank resolution, and Edwards', Manning's and Wentworth's ordinances; power to appoint election commissioners for taking of a portion of the votes; power to appropriate money in several instances,--for the payment of a printer, for witnesses in the special investigations of the charges of disloyalty, for the relief of the wounded soldiers at Ft. Donelson, and for extra pay to state officers for work done in getting out

1. Resolution on the Illinois Central Railroad claims and the bank resolution.

2. Edwards' Ordinance - Convention Journal, page 490.

3. Manning's Ordinance - Convention Journal, page 479.



8.



reports for the use of the members, and also extra pay to officers of the Convention.

This list of powers is a formidable one, and several of them were not recognized by other departments of the state. The governor curtly refused to recognize the instructions contained in the resolution concerning claims of the Illinois Central Railroad.<sup>1</sup> Manning's Ordinance with its appropriation of a half million of dollars came to nothing. The auditor refused to recognize the validity of the resolution granting the state officers pay for extra work required by the Convention, and this claim was allowed only after the next legislature had made an appropriation for that purpose.<sup>2</sup> The votes of the soldiers as taken by the special commission were never recorded by the Secretary of State, probably on the ground that such vote was not legally taken. The pretended ratification of the proposed amendment was not recognized as valid. The supreme court of the state in the case of The City of Chicago vs. A.C. Coventry et al., the case not being reported, decided that the ordinance, repealing certain acts of the government of Chicago and empowering the city to elect its own city officers, was not binding, that the Convention was not competent to repeal an act of the legislature;<sup>3</sup> and that all action by the Convention was swept away by the defeat of the constitution. Thus the attempt of the Convention to exercise the powers of a provisional government came to naught.

There <sup>are</sup> two theories regarding state constitutional conventions. One is that they are endowed y transfer with all the powers of the

1. Governor' Yates' Communication, Feb. 13, Conv'n Journal, p. 421.
2. Jameson, The Constitutional Convention, psge 402.
3. " " " " " " page 397.



people whom they represent and are limited in their actions only by the Constitution of the United States; the other is that the convention is only a collection of delegates called to propose specific constitutional changes and limited in their action to the purpose for which they were called. These two theories were in direct conflict with the Convention of 1862; the majority maintained and acted upon the first theory, the minority held <sup>to</sup> the second theory. The view of the majority was not a novel view of the powers of the Convention. The first enunciation of the theory appears to have been in 1821 in the New York Convention. " In 1829, it again made its appearance in the Virginia Convention. A question arose as to the power of that Convention to disregard positive instructions of the legislature relative to the submission of the fruits of its labors to the people. In the discussion of the question doctrines were propounded which afterwards ripened into the theory in question"<sup>1</sup> On this question John Randolph said: "Sir, we have been called in counsel to the people - as State physicians to propose remedies for the State's diseases, not to pass any act which shall have in itself any binding force. We are here as humble advisers and proposers to the people."<sup>2</sup>

The next instance of claims of extreme power for conventions was in 1836 in the letters of Mr. Dallas on the powers of the Convention about to be assembled in Pennsylvania. In the letter he said: "A convention is the provided machinery of a peaceful revolution \* \* \* \* \* When ours shall have assembled it will possess,

1. Jameson, The Constitutional Convention, page 295.

2. Debates, Virginia Convention, 1829, page 868, from Jameson, Constitutional Convention page 294.







within the territory of Pennsylvania, every attribute of absolute sovereignty, except such as may have been yielded and are embodied in the Constitution of the United States. What may it not do? It may reorganize our entire social existence; \* \* \* \* \* it may restore the institution of slavery among us; \* \* \* \* \* it may withdraw the charters of our cities; \* \* \* \* \* it might permanently suspend the writ of habeas corpus, and take from us \* \* \* \* \* the trial by jury."<sup>1</sup> When the Convention met, considerable discussion was had whether the law calling the Convention was binding and how wide powers the Convention actually possessed. Some of the opinions expressed, indicated that the theory advanced by Dallas was growing. Ten years later in the Illinois Constitutional Convention the two theories again clashed. General Singleton, who was one of the "high rollers" in the Convention of 1862, tried to get a resolution adopted saying that the Convention was limited to the proposing of changes in the constitution, but his resolution was tabled.<sup>2</sup> In the discussion of the question Mr. Peters said "I have and will continue to vote against any and every proposition which will recognize any restrictions of the powers of this Convention!" "We are", he continued, "the sovereignty of the state. We are what the people of the state would be, if they were congregated here in one mass meeting. We are what Louis XIV said he was 'We are the State'. We can trample the constitution under our feet as waste paper and no one can call us to account save the people."<sup>3</sup>

1. Letter of Hon. George M. Dallas in the Pennsylvania Convention, September 5, 1836, in Jameson, Constitutional Convention, page 292.

2. Journal of convention of 1847, page 13.

3. State Register, June 10, 1847, in Jameson, The Constitutional Convention, page 292.



"In 1848 this same theory made its appearance in the Kentucky convention, and four years later in Massachusetts under the patronage of Messrs. Hallet and Butler."<sup>1</sup> In 1861 it appeared in the secession conventions. In the Alabama convention of that year Vanecy said: "The people are here in the presence of their deputies, life, liberty, and property are in our hands. Look to the ordinance adopting the Constitution of Alabama. It says 'We, the people of Alabama' etc. etc.!" All our acts are supreme without ratification, because they are the acts of the people acting in their sovereign capacity!"<sup>2</sup>

"In the meantime the theory had been extended. In Maryland, in 1837, the theory was put forward that a mere majority of the adult males, without regard to legal forms, can at any time call a convention to alter or abolish a constitution. A call for a convention was issued by private individuals, who only desisted upon the appearance of a proclamation by the governor denouncing their action as treasonable."<sup>3</sup> Five years later in Rhode Island a convention called by unofficial persons, and claiming to represent the people of the state, because elected by a majority of all the male citizens twenty-one years of age, resident in the state, though not by a majority of the legal voters at a regular election, framed a constitution and attempted, by force of arms to maintain it as the legitimate constitution of the state."<sup>4</sup>

Thus the members of the Convention of 1862 could point to many precedents where claims similar to their own had been put forward. Some of the members had heard the question debated in the convention of 1847, and had matured the theory in their own

1. Jameson, The Constitutional Convention, page 296.

2. History of debates, Alabama Convention, 1861, page 114 - Jameson, Constitutional Convention, page 297.

3. Jameson, Constitutional Convention, page 297.

4. Jameson, Constitutional Convention, page 297.







minds. It is not so much because their theories were new that they should be condemned, as because they chose such an inopportune time to advance them.



## CHAPTER V.

## PARTISAN ACTION OF THE CONVENTION

There is some evidence that the leaders in the Convention had made up their minds to have a Democratic program carried out. On the very day the Convention met the St. Louis Republican<sup>1</sup> whose correspondent was in a position to know the actual condition of affairs has the following statement: "It is expected that the Convention will adopt some measures not strictly related to the constitution. Much dissatisfaction is manifested in some circles with the management of army affairs here by the officers of the state. It is the opinion of many that the time has arrived when the state should surrender entirely into the hands of the officers of the general government the management of all matters relating to the Illinois troops and especially that the expenses incurred in supporting the state war machinery should no longer burden the treasury of the state \* \* \* \* \*. The Convention is quite likely to adopt an ordinance suspending, for the present, war measures adopted by the special session and restraining the executive officers of the state from further active army operations conducted at the expense of the state. It is believed that some such measure or ordinance would give satisfaction to the people of the state.- relieve them from expenses which the United States Government offers to assume, and dissatisfy nobody but an army of officials whose support is derived from offices which at first were absolutely necessary, but have served their purpose and should be no longer maintained."<sup>2</sup>

1. The Pantagraph on January 8 says that Springer was the correspondent for the St. Louis Republican.

2. Quotation in an editorial of State Register, January 8.





An article in the Chicago Tribune on the same day indicates a similar plan: "We must not conceal from our leaders that there are rumors afloat \* \* \* \* \* ; that it is said that the time and occasion will be embraced as peculiarly favorable to the reorganization of the Democratic party on the semi-disloyal platform occupied by the Chicago Times and other kindred prints; that with a high hand and violation of all precedent, a new state administration will be organized by the Convention itself; that a very odious apportionment will be made; and to render all sure, the constitution will be declared in force without a submission to the people. We give no credit to such rumors. \* \* \* \* \* We have faith that the good feeling that was so conspicuous in the election of delegates will be carried into the deliberations that are to ensue."<sup>1</sup>

That there was some foundation for some of these intimations seems evident from the policy the Convention at once adopted toward the state administration. The only object to be obtained by the appointment of a printer by the Convention was the giving of a good job to a faithful Democrat.

The hostility toward the state administration took two forms; an attempt to unearth fraud or scandal in the administration of the military department and the turning of the state officers out of office, while county officers were permitted to hold over by reducing the term of office of the governor to two years and ordering an election for the next November. During the first few weeks of the Convention resolution after resolution was showered

1. Quoted editorially in the State Journal, January 8.



upon the governor apparently in <sup>the</sup> form of mere inquiries, but in reality <sup>i</sup> calculated to give the impression that there was gross fraud connected with the executive department. The committee on military was instructed to carry on an investigation as to whether Illinois soldiers were as well equipped as volunteers from other states, and if they were not, the committee should fix the responsibility for their poor equipment. The information to be thus gained could not be and was not intended to be of use in forming the constitution. The committee on finance was instructed to investigate the war expenditures and the majority reported that the governor had exceeded his authority in some expenditures, and that the governor had retained control of the supply department after the Quarter Master of the United States had signified his willingness to take charge of it.<sup>1</sup> On more than one occasion members of the Convention in discussing resolutions of inquiry or demands for information insinuated that there was crookedness in the financial administration of the state. One of the most noticeable cases of this was in the speech of Mr. Buckmaster, discussing the resolution instructing the governor and army auditors to suspend action in the case of the claims of the Illinois Central Railroad. In this speech he insinuated that the governor had induced army auditor Woodworth to retain his position so as to pass the claims of the Illinois Central Railroad which the newly appointed auditor, Mr. Henderson, refused to pass.<sup>2</sup> It turned out on later investigation that there was absolutely nothing in the charge. It was only one of the <sup>instances</sup> numerous <sup>the</sup> when extreme party feeling manifested itself. The hostile attitude toward Governor Yates was so marked that it needs

1. Convention Journal, pp 674 - 688.

2. Convention Journal, page 420.







no further illustration.

The partisan nature of the majority was also seen in the way they deferred action upon <sup>or</sup> ~~amended~~ resolutions over Union victories. Anthony's resolution over the victory at Ft. Henry is an illustration. It was referred to a committee that referred it back the next day carefully shorn of all its patriotic fervor. Such action was not popular, nor was it looked upon as being quite loyal. The patriotic ardor was so great that no attempt was made to modify Anthony's Ft. Donelson resolution, but on the other hand the majority tried to ride with the popular movement in the patriotic band wagon.

Manning's appropriation ordinance for the relief of the soldiers appears to have been little less than an attempt to make the political capital out of <sup>the</sup> Ft. Donelson victory. To be sure Mr. Manning insisted otherwise and tried to get the resolution through without debate - saying: "I can't fiddle while Rome is burning",<sup>1</sup> but his motion for the previous question was lost. In the debate both Wentworth and Lawrence stated that the treasurer said that there were already lying in the vaults of his office \$800,000 in unsold bonds which could be used if necessary. The facts in the <sup>were</sup> case <sup>^</sup> clearly stated: that the governor was on the ground, that he knew the conditions, that he had not asked for any assistance, that if necessary the bonds already printed could be sold, that it would require considerable time to print and sign the bonds, that the Convention was without power to authorize such bonds, and that even if it had such power, the rate of ten per cent was such as

1. Debates in Constitutional Convention, February 18, in State Register, February 26.



to seriously endanger the credit of the state. All these objections were urged, but nevertheless the Convention passed the ordinance by a decided majority. <sup>h</sup>Antony in his Constitutional History of Illinois says regarding the affair: "There never was a more praiseworthy object: but as the ordinance was introduced, as all who were members of the Convention know, as a bluff, and to silence hostile criticism of the action of those who were in the majority, it is needless to say it never amounted to anything". Three days after the passage of the ordinance, the State Journal in an editorial said: "the people will treat with contempt and scorn the despicable measures that would attempt to make political capital out of the misfortunes of our brave soldiers".<sup>1</sup> The Chicago Tribune on February 20 says: "The appropriation of \$500,000 for the wounded soldiers is the subject of much comment. Members even who voted for it look upon it as a ridiculous proceeding".<sup>2</sup> The next day the correspondent goes on to say that it was <sup>r</sup>hunting the credit of the state and that there had been many telegrams of inquiry from financial houses concerning the strange action. The State Journal editorially says: "However incorrect the action of the Convention may appear to those at a distance, it is notorious here that the so-called ordinance was intended for no other object than merely as a voucher to the Democratic majority in the Convention, whose previous opposition to the war expenditures had raised a question as to their loyalty. It is looked upon, not only by members, but by all who have watched the movements of the Convention as a

1. State Journal, February 21.

2. State Journal, February 21 - quoted editorially.







~~is~~ a 'ridiculous proceeding' and damaging<sup>to</sup> the credit of the state, prompted not by necessity but by a personal dread of popular vengeance."<sup>1</sup> A few days later the same paper said: We hear it stated that one of the most prominent Democrats in the Convention candidly admits that the famous ordinance was an innocent piece of buncombe."<sup>2</sup> The above quotations, while no doubt radical, show the general consensus of opinion among Republicans. The Democratic papers defended the ordinance vigorously for a time, but later preferred to discuss other things.

The apportionments<sup>were</sup> admittedly in the interest of the Democrats. Mr. Hacker, in discussing the apportionments, said: "So far as I am concerned as an individual member of this Convention and a Democrat in whom there is no guile, I do not feel disposed to go for any proposition which will make, in any contingency, the next General Assembly doubtful."<sup>3</sup> Mr. Buckmaster in discussing the senatorial apportionment explained why Clinton County<sup>with inhabitants</sup> 10000<sup>^</sup> was added to St. Clair and Washington counties which had already more than the proper population for a district. In part he said: "I am willing to admit to the gentleman from St. Clair, frankly, that I am acting as a Democrat in this thing; for in the first place if we make a Democratic representation it will be right; \* \* \* \* \* Clinton County with a population of ten or eleven thousand, and St. Clair with her large population, have three contiguous districts, and we gave it up to her because she is entitled to it, and because of another thing equally important - it will make the St. Clair district Democratic beyond a shadow of a doubt."<sup>4</sup>

1. and 2. State Register, February 23 and 26 respectively.

3. Debate in Constitutional Convention, in State Register, Mar. 21.

4. Debate in Constitutional Convention, Mar. 10, State Reg. Mar. 20.



This was a very frank confession of a deliberate gerrymander of the state. In discussing the legislative apportionment he, Mr. Buckmaster, said he was elected as a square-toed Democrat and that if the balance of the Democratic party felt as he did it would be a party constitution.<sup>1</sup> The following from the Quincy Whig shows how partisan the legislative apportionment was and how the Republican press looked upon it. "The Egyptians at Springfield have incorporated into their<sup>new</sup> constitution a grand legislative apportionment scheme which is to give the dark skinned Democracy power for the next hundred years perhaps. By way of showing how they mean to do it, notice that the following seven Republican counties with a population of 164,000 are allowed seven members:- Henry 20,661., Ogle 22,887., Rock Island 21,001., Jo Davies 27,177., McHenry 22,088., Winnebago 24,492., Stephenson 25,113.

And then read this list of ten Egyptian counties with a population of less than 131,000 which are to have ten members:- Williamson 12,205., Marion 12,733., White 12,403., Christian 10,493., Jefferson 12,965., Shelby 14,635., Washington 13,731., Clark 14,987., Monroe 12,832., Schuyler 14,685.

However there is little need of debate on the worth of the constitution. Its illegality in every respect is so transparent that no fair minded man can hesitate about voting the thing down as soon as the chance is offered. It smells to heaven with infamy and corruption."<sup>2</sup>

It was claimed that the negro question was repeatedly brought forward as a convenient method of creating party spirit

1. Debate in Constitutional Convention, Mar. 10, State Reg. Mar. 20.

2. Quoted in Pantagraph, March 24.







and so adding an element that would help carry the constitution through. In the very closing days of the session one of these negro propositions was brought up<sup>and</sup> the attempt made to force it through under the gag motion. Mr Anthony became angry and indulged in a scathing denunciation of such partisan tricks. Probably the negro question was pushed to the front so as to arouse the prejudice of the southern part of the state, as that was the section which controlled the Convention. Of the officers of the Convention, not a single one came from north of Logan county. The important committees were controlled by men from the southern half of the state assisted by men from the northern half that were in sympathy with the extreme policy of the majority. It was no accident, either, that this condition existed. The Democratic majority acted as a party during the organization of the Convention - holding a regular party caucus the night before the Convention met and agreeing upon the program for the next day. Besides, almost every important question that arose during the proceedings was disposed of by practically a party vote. In their zeal, however, to make the constitution all right from the standpoint of the Democratic party and its ideas, the leaders overreached themselves, and in the eyes of many Republicans the vote on the adoption of the constitution became almost a test of loyalty. Even though the constitution had been in itself acceptable, it is doubtful if the people would have accepted it after the open hostility shown by the Convention to the war policy of the state administration.



## CHAPTER VI

## THE QUESTION OF LOYALTY

As soon as the members of the Convention took an attitude of hostility toward the state administration, imputations were made as to their loyalty. About the close of the first week of the Convention the Chicago Tribune contained this: "The people of Illinois will do well to watch the operations of a body known to comprise many actual sympathizers with the rebellion, rank secessionists at heart, who would be pleased to carry with them all Egypt into the Southern Confederacy"<sup>1</sup> About the close of January the Alton Telegraph expressed itself thus: "The action of our state constitutional Convention is most strange and unaccountable, if we are to look upon them as a body of loyal and patriotic men. It appears to be their constant aim in every move they make, to stir up the most bitter and unrelenting strife \* \* \* \* \*. If the men who constitute the majority of the Convention are sincere in their professions of loyalty, why do they not attend strictly to the duties for which they were elected."<sup>2</sup> On February 11 the Chicago Tribune has this in its editorial: "There are men in that Convention who would not hesitate to involve our people in anarchy - who wait only the favorable moment to seize the military power of the state, and to turn the arms of Illinois upon our common country. There is one there known to have engaged in a treasonable correspondence with a Kentucky rebel, the object of which was the division of the state and a transfer of its southern extremity to the rebel confederacy."<sup>3</sup> In the same edition the

1. Quoted in an editorial in State Register, January 13.

2. Quoted in an editorial of State Journal, February 1.

3. " " " " " " " " " " 13.







~~the~~ special correspondent at Springfield stated that it was rumored that a majority of the members of the Convention were members of the Knights of the Golden Circle. <sup>1</sup>

This charge at once attracted the attention of the members of the Convention. Mr Thornton, on February 12, introduced a resolution providing for a special committee, consisting of Messrs. Ross, Orme, Terry and Burr to investigate the charges and report the same to the Convention.<sup>2</sup> The names of Mr. Thornton and Mr. Pleasants were later added to the committee by the Convention. In the discussions of the above resolution Mr. Thornton said: "If one single member here is a member of that order, I, for one, want to know it, and if so, I think such a one should be expelled from the body. I never had a thought of disloyalty to the constitution of this glorious Union; and I do not believe there is such a sentiment in this Convention".<sup>3</sup> Other members were just as firm in their assertions of loyalty. Mr. Wentworth said he did not believe there were any disloyal sentiments in the Convention, but he insisted that the reporter for the Tribune<sup>4</sup> was honest in his belief when he made the statement, and he thought it best to have the matter investigated.<sup>5</sup>

This committee spent much time in investigation, called witnesses from various parts of the state, traced down many rumors of disloyalty to find there was really nothing in them, and

1. Convention Journal page 410.

2. " " " " 410.

3. Debates in Constitutional Convention, February 12, In State Register, February 13.

4. Mr. James R.C. Forest.

5. Debates in Constitutional Convention, February 12, in State Register, February 13.



found that the charges in the Tribune were aimed at Mr. Wilson. The correspondent of the Tribune" stated in his testimony<sup>1</sup> that a lady had asserted one member held a commission from Jefferson Davis for a position in the rebel army; that it was rumored that within three of a majority of the Convention were members of the Knights of the Golden Circle; that one member made the declaration to a friend, that the Convention was 'slap up,' which as interpreted by Mr. Forest was the watch word of the order; that the governor of the state had a letter proving a treasonable correspondence on the part of one member; that there was a list at the United States marshal's office which embraced the names of the secession members.<sup>2</sup> The lady referred to, denied any knowledge of any such statement of hers; the governor asserted he firmly believed the member of the Convention was a loyal and patriotic citizen and that he could not consent to refer the matter to the committee; and the United States marshal for the southern district of Illinois stated he had never communicated to any person any information as to the disloyalty of any member of the Convention nor did he know of any member of the Convention being disloyal to the United States government."

"The conclusion reached by your committee is, that the various rumors as to members of the Convention being Knights of the Golden Circle, or secessionists, or implicated in any manner with any attempt to aid the rebellion, or thwart the United States government in its effort to maintain the Union and preserve the Constitution, have no foundation. So far as any evidence could be obtained,

1. Reports of Special Committee, Convention Journal, page 942.

2. " " " " " " " " " "







there was none to taint the loyalty or impeach the patriotism of any delegate. There is no inclination to censure the reporter though your committee greatly deprecate any attempt to dignify vague rumor into serious and grave charges."<sup>1</sup>

There is no proof that any member was ever disloyal. They all protested they were loyal to the general government, but in the eyes of many loyal men their action was in effect disloyal. From all the evidence to be obtained, there is no doubt that the leaders considered themselves good Union men. They were opposed to a diruption of the Union, they were oppo l to the extension of slavery, but they were not in favor of a war which would interfere with slavery; hence they were in a mood to criticize the war policy of the administration. Yet, they scarcely did this distinctly except in cases of arbitrary arrests for disloyal utterances - they were too strongly democratic <sup>however</sup> to favor such a vast extension of arbitrary military powers as the suspension of the writ of Habeas Corpus involved.

The leaders did not consider loyalty to the national government to include loyalty to governor Yates and the state military department. They were willing to go to almost any length to embarrass the officers of the state and to prepare a state constitution which would enable them to reorganize their party and regain and hold control of the machinery of the state government. If they were disloyal, it was in the indirect way of doing all they could to cripple the efficiency of the military organization of the state government, which might have resulted, in some one of the crises of the war, in seriously crpppling the national government.

1. Convention Journal, page 943.



If they had succeeded in doing all they planned, there is but little doubt but some such result would have followed; but we have no proof that the leaders foresaw such results as possible, or deliberately aimed to bring them about.









